

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 46

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

Ex parte HAE-SEUNG LEE

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**PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

Appeal No. 2003-0573
Application No. 08/931,125

HEARD: June 12, 2003

Before RUGGIERO, GROSS, and BLANKENSHIP, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Appellant requests that we reconsider that portion of our decision of July 2, 2003 wherein we sustained the Examiner's 35 U.S.C. § 102(e) rejection of claims 1, 2, and 6 based on Jones.¹

¹ Appellant also filed a Substitute Request for Rehearing solely directed to the correction of typographical and grammatical inaccuracies in the original Request for Rehearing.

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In our original decision, we determined that the Examiner had established a prima facie case of anticipation which had not been persuasively rebutted by any convincing arguments from Appellant. In particular, we found to be unpersuasive Appellant's contention that Jones does not disclose a one-to-one caching arrangement in a RAID-5 disk system.

Appellant now asserts in this request that claim 1, the representative claim for Appellant's grouping including claims 1, 2, and 6, also requires a dedicated region for storing parity information. In making this assertion, Appellant points to language in claim 1 which recites memory devices ". . . having a first region for sequentially storing parity information" and the obtaining of parity information ". . . from said first region" of the memory devices. In Appellant's view (Request, pages 4 and 5), this language of claim 1 distinguishes over a RAID-5 system, such as discussed in Jones, in which parity data is distributed throughout the disk drives.

In reviewing the arguments in this Request, we make the observation that any arguments related to the requirement of a dedicated parity information storing region in appealed claim 1, and any asserted absence of such feature in Jones with respect to claim 1, were not made in the Briefs before us on appeal. An

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argument not timely made is an argument waived. Since Appellant never raised this factual question with the Examiner, we do not have the benefit of the Examiner's position on this question of fact. A new argument advanced in such a manner has not afforded the Examiner an opportunity to respond to the new argument. It is a requirement of 37 CFR § 192 that Appellant submits arguments in the Brief(s) specifying all of the errors made by the Examiner in the rejection. See Ex Parte Hindersinn, 177 USPO 78, 80 (Bd. App. 1971).

It is further well settled that the failure on the part of an Appellant to present an argument before the board prior to a request for rehearing constitutes a waiver of such argument. See In re Kroekel, 803 F.2d 705, 709, USPQ 640, 642-43 (Fed. Cir. 1986). Consequently, we will not consider this new argument of fact as a basis for changing our prior decision in this case. We will offer the comment, however, that it does not appear that the claim language ". . . first region for sequentially storing parity information" requires a "dedicated" storage region as asserted by Appellant in this Request.

In conclusion, based on the foregoing, we have granted Appellant's request to the extent that we have reconsidered our

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decision of July 2, 2003, but we deny the request with respect to making any changes therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REHEARING/DENIED

Joseph F. Ruggiero

JOSEPH F. RUGGIERO)
Administrative Patent Judge)
)

Anita Pelman Gross)
ANITA PELLMAN GROSS) BOARD OF PATENT
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) AND
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Howard B. Blankenship)
HOWARD B. BLANKENSHIP)
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